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304 NLRB No. 140

D--2288
Hayward, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEWMAN SMALLEY, INC. d/b/a
VETERAN'S YELLOW CAB OF HAYWARD
AND A-PARATRANSIT VEHICLES

and

Case 32--CA--11820

RETAIL DELIVERY DRIVERS, DRIVER
SALESMEN, LOCAL 588, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO¹

September 27, 1991
By Chairman Stephens and Members Oviatt and Raudabaugh
DECISION AND ORDER
Upon a charge filed by the Union May 8, 1991, the General Counsel of the

National Labor Relations Board issued a complaint against Veterans Yellow Cab of Hayward, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On August 12, 1991, the General Counsel filed a Motion for Summary Judgment. On August 14, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ The name of the Charging Party, Retail Delivery Drivers, Driver Salesmen, Local 588, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, has been changed to reflect the new official name of the International Union.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated July 25, 1991, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a California corporation, with offices and places of business in Oakland and Hayward, California, is engaged in the business of providing taxi service to the general public and providing transportation to senior citizens and disabled persons. During the 12 months preceding the issuance of the complaint, the Respondent, in the course of its business operations, derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5000 which originated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Before March 5, 1990, the Respondent's sole shareholder was UMC, Inc., and its general manager was James Jarocki. On October 27, 1990, UMC, Inc. transferred its shares of the Respondent to G. Leonard Rochon, who became the Respondent's sole shareholder. Following October 27, 1990, James Jarocki remained the Respondent's general manager, and there were no significant changes in the Respondent's operations.

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time paratransit drivers employed by the Respondent at its Hayward, California facility; excluding all taxi drivers, office clerical employees, guards, and supervisors as defined in the Act.

Since about March 5, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees, and has been recognized as such by the Respondent, except as set forth below. Recognition has been embodied in a bargaining agreement running from March 5 until May 31, 1990, with a 1-year extension to May 31, 1991. The agreement and the extension contain an automatic annual renewal clause, pursuant to which the extension automatically renewed and now extends to May 31, 1992. At all times since March 5, 1990, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of unit employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The collective-bargaining agreement provides for payment by the Respondent, on behalf of its unit employees, of certain moneys to the Pension Trust Fund. The agreement also provides for the Respondent to pay, on behalf

of the unit employees, certain moneys to Kaiser Permanente for health insurance coverage. The agreement further provides for union dues checkoff.

Since about November 8, 1990, the Respondent has failed and refused to remit the contractual pension trust fund contributions on behalf of unit employees. From about November 8, 1990, and until about January 31, 1991, the Respondent deducted dues from its employees' paychecks pursuant to the dues-checkoff provision of the agreement. Since about November 8, 1990, however, and continuing to date, the Respondent has failed and refused to remit to the Union the dues it withheld;² and since about February 1, 1991, the Respondent has failed and refused to withhold dues pursuant to the checkoff provision, or to remit the health insurance payments to Kaiser Permanente.

About February 25 and March 13, 1991, the Union, by letter, requested the Respondent to recognize and bargain collectively with it as the exclusive collective-bargaining representative of unit employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Since about February 25, 1991, the Respondent has failed and refused to recognize or bargain with the Union as the representative of employees in the unit.

By failing and refusing to remit pension trust fund contributions and health insurance payments on behalf of unit employees; by failing and refusing to withhold authorized dues and to remit dues to the Union; and by failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative of employees in the unit, the Respondent has unlawfully failed and refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

² About March 15, 1991, the Union, by letter, requested the Respondent to remit to it the moneys deducted by the Respondent pursuant to the checkoff provision.

Conclusion of Law

By failing and refusing to bargain with the Union in the manner set forth above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent, on request, to recognize and bargain with the Union as the exclusive representative of employees in the unit and, if an understanding is reached, to embody it in a signed agreement. With regard to pension and health insurance benefits, we shall order the Respondent to make the contractually mandated contributions, to remit all payments it owes to the Pension Trust Fund and to Kaiser Permanente, and to reimburse employees for any expenses they may have incurred because of the Respondent's failure to make those payments, in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in New Horizons for the Retarded, 283 NLRB 1173 (1987). Amounts to be paid into the benefit funds shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213 (1979). Concerning dues checkoff, we shall order the Respondent to withhold moneys as provided in the checkoff provision of the collective-bargaining agreement, and to remit to the Union all authorized dues that it failed to

remit since November 8, 1990, with interest as provided in New Horizons, supra.³

ORDER

The National Labor Relations Board orders that the Respondent, Newman Smalley, Inc. d/b/a Veterans Yellow Cab of Hayward and A-Paratransit Vehicles, Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Retail Delivery Drivers, Driver Salesmen, Local 588, International Brotherhood of Teamsters, AFL--CIO (the Union) as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All full time and regular part time paratransit drivers employed by the Respondent at its Hayward, California facility; excluding all taxi drivers, office clerical employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to make contractually mandated contributions on behalf of its unit employees to the Pension Trust Fund and to Kaiser Permanente.

(c) Failing and refusing to withhold authorized union dues pursuant to the checkoff provision of the collective-bargaining agreement, or to remit dues to the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

³ See Timber Products Co., 277 NLRB 769, 771 (1985).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contractually mandated payments on behalf of unit employees to the Pension Trust Fund and to Kaiser Permanente.

(b) Withhold authorized dues from the paychecks of unit employees as provided in the checkoff provision of the collective-bargaining agreement, and remit all such dues to the Union.

(c) Remit all payments owed to the Pension Trust Fund and to Kaiser Permanente, and all dues owed to the Union, in the manner set forth in the remedy section of this decision.

(d) Make whole all present and former unit employees for any losses they may have suffered as a result of the Respondent's failure to make the contractually mandated payments to the Pension Trust Fund and to Kaiser Permanente, in the manner set forth in the remedy section of this decision.

(e) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe benefit payments or union dues due under the terms of this Order.

(g) Post at its facility in Hayward, California, copies of the attached notice marked "'Appendix.'"⁴ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 27, 1991

James M. Stephens, Chairman

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

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James M. Stephens, Chairman

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full time and regular part time paratransit drivers employed by us at our Hayward, California facility; excluding all taxi drivers, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to make contractually mandated payments to the Pension Trust Fund and to Kaiser Permanente on behalf of employees in the unit.

WE WILL NOT fail and refuse to deduct authorized union dues from the paychecks of unit employees, or to remit the dues to the Union, as provided in the collective-bargaining contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union as the exclusive representative of employees in the unit concerning rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement.

WE WILL make all payments to the Pension Trust Fund and to Kaiser Permanente on behalf of unit employees, as required by the contract.

WE WILL deduct authorized union dues from the paychecks of unit employees and remit the dues to the Union, as provided in the contract.

WE WILL remit all payments we owe to the Pension Trust Fund and Kaiser Permanente, and reimburse our unit employees for any expenses they may have incurred because of our failure to make the required payments.

WE WILL remit to the Union all authorized union dues that should have been remitted pursuant to the checkoff provision of the contract since November 8, 1990, with interest.

NEWMAN SMALLEY, INC. D/B/A
VETERANS YELLOW CAB OF
HAYWARD AND A-PARATRANSIT
VEHICLES

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.